

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY BAKER,

Petitioner,

v.

WARDEN, Noble Correctional
Institution,

Respondent.

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Case No. 3:15-cv-414

JUDGE WALTER H. RICE

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #13) AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #16);
OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. ##14,
17); DISMISSING PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS (DOC. #1) WITH PREJUDICE; JUDGMENT TO
ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER;
DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL
IN FORMA PAUPERIS; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States
Magistrate Judge Michael R. Merz in his Report and Recommendations, Doc. #13,
and Supplemental Report and Recommendations, Doc. #16, as well as upon a
thorough *de novo* review of this Court's file and the applicable law, the Court
ADOPTS said judicial filings in their entirety.

Petitioner's Objections thereto, Docs. ##14 and 17, are OVERRULED.

Notably, he has not objected to the recommendation that Grounds One and Two of
the Petition be dismissed with prejudice. He objects only to the recommendation

to dismiss Ground Three of the Petition, the ineffective assistance of counsel claim based on trial counsel's failure to investigate and subpoena crucial witnesses.

Having reviewed those objections, the Court agrees with Magistrate Judge Merz that the state appellate court's decision, rejecting this claim on the merits, was not an objectively unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). *See* 28 U.S.C. § 2254(d)(1). Petitioner has failed to show that the state court unreasonably denied his request for an evidentiary hearing and, because that claim was decided on the merits, this court's review is limited to the record that was before the state court. *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011).

Under the circumstances presented here, Petitioner is not entitled to an evidentiary hearing in federal court. *See Ballinger v. Prelesnik*, 709 F.3d 558, 561 (6th Cir. 2013) ("district courts are precluded from conducting evidentiary hearings to supplement existing state court records when a state court has issued a decision on the merits with respect to the claim at issue."). Moreover, Petitioner is not entitled to dismissal without prejudice to enable him to gather new evidence to expand the record to support his claim of ineffective assistance of counsel.

Accordingly, the Court DISMISSES the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, Doc. #1, WITH PREJUDICE.


Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's

decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: June 16, 2016



WALTER H. RICE
UNITED STATES DISTRICT JUDGE